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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/700,070	10/31/2003	Bernhard Awolin	J&J-5083	3738

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EXAMINER	
HAND, MELANIE JO	

ART UNIT	PAPER NUMBER
3761	

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Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

ED

Office Action Summary	Application No.	Applicant(s)	
	10/700,070	AWOLIN ET AL.	
	Examiner	Art Unit	
	Melanie J. Hand	3761	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1)☒ Responsive to communication(s) filed on *24 May 2007*.

2a)☐ This action is **FINAL**. 2b)☒ This action is non-final.

3)☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4)☒ Claim(s) *1-39* is/are pending in the application.

4a) Of the above claim(s) *25-39* is/are withdrawn from consideration.

5)☐ Claim(s) _____ is/are allowed.

6)☒ Claim(s) *1-24* is/are rejected.

7)☐ Claim(s) _____ is/are objected to.

8)☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9)☐ The specification is objected to by the Examiner.

10)☐ The drawing(s) filed on _____ is/are: a)☐ accepted or b)☐ objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11)☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12)☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a)☐ All b)☐ Some * c)☐ None of:

1.☐ Certified copies of the priority documents have been received.

2.☐ Certified copies of the priority documents have been received in Application No. _____.

3.☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1) ☒ Notice of References Cited (PTO-892)
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) ☐ Information Disclosure Statement(s) (PTO/SB/08) Paper No(s)/Mail Date _____.
4) ☐ Interview Summary (PTO-413) Paper No(s)/Mail Date. _____ .
5) ☐ Notice of Informal Patent Application
6) ☐ Other: _____.

DETAILED ACTION

Election/Restrictions

Applicant's election with traverse of Group I, claims 1-24 in the reply filed on May 24, 2007 is acknowledged. The traversal is on the ground(s) that the required search for the inventions of group I and II together would not be burdensome on the examiner. This is not found persuasive because the inventions are classified under different classifications and thus clearly require separate respective searches of the relevant art. See MPEP 808.01.

The requirement is still deemed proper and is therefore made FINAL.

Claims 15-39 are withdrawn from further consideration pursuant to 37 CFR 1.142(b), as being drawn to a nonelected invention, there being no allowable generic or linking claim. Applicant timely traversed the restriction (election) requirement in the reply filed on May 24, 2007.

Response to Arguments

Applicant's arguments, see Remarks, filed February 6, 2007, with respect to the rejection(s) of claim(s) 1-24 under 35 U.S.C. 103 have been fully considered and are persuasive. Therefore, the rejection has been withdrawn. However, upon further consideration, a new ground(s) of rejection is made in view of a different interpretation of previous applied prior art references. Specifically, the Office is issuing this non-final action to correct the respective grounds of rejection of claims 1-24 in the action mailed October 3, 2006.

With respect to applicant's arguments regarding the rejection of claim 1 over Brown in view of Olson and further in view of Li: Applicant's arguments are directed to the combined teaching of Brown and Osborn and Li where Osborn is not introduced to reject claim 1. Hence

this argument will not be addressed further. Applicant argues that the combine detaching does not meet all of the claim limitations yet fails to specify which elements in particular applicant is referring to. Therefore the Office cannot fully respond.

Applicant further argues that the rejection does not indicate any desirability to modifying the article of Brown and Olson in the manner taught by Li. Applicant is reminded that a rationale for supporting a *prima facie* case of obviousness can be reasoned from common knowledge in the art. See MPEP 2144. Li states explicitly that "it is known in the industry that certain surfactants, such as TRITON X-100 from Rohm and Haas, can be applied as an aqueous solution or suspension to the surface of hydrophobic fibers, filaments or nonwoven fabrics with the resulting effect of rendering the fibers, filaments or fabrics wettable, although not absorbent." ('429,¶0007) Thus, treating the hydrophobic overwrap material of Brown to impart desired properties such as a liquid-permeable zone thus yielding an overwrap material with a liquid-resistant zone and a liquid permeable zone, is known in the art. The desirability, though not necessary to establish a *prima facie* case by the Office, is that this treatment lends a certain degree of control to the manufacturer to customize the overwrap material depending upon its intended end-use or desired performance.

In response to applicant's argument that the references fail to show certain features of applicant's invention, it is noted that the features upon which applicant relies (i.e., a tampon having a liquid resistant base) are not recited in the rejected claim(s). Although the claims are interpreted in light of the specification, limitations from the specification are not read into the claims. See *In re Van Geuns*, 988 F.2d 1181, 26 USPQ2d 1057 (Fed. Cir. 1993). While the title of the claimed invention is "Tampon Having Liquid Resistant Base", the term base only appears in the title and is not defined by, or correlated with, any of the disclosed structural elements of the tampon. The only disclosed liquid-resistant element of the claimed tampon is the liquid-

resistant zone of the overwrap material. If this is what applicant intends to refer to when referring to a liquid-resistant base in the Remarks, then this argument has been addressed *supra*. Otherwise, this feature is not claimed or disclosed.

Claim Rejections - 35 USC § 103

The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

Claims 1-5, 7-20 and 22-24 are rejected under 35 U.S.C. 103(a) as being unpatentable over Brown, Jr. (U.S. Patent No. 5,185,010) in view of Li et al (U.S. Patent Application Publication No. 2002/0169429).

With respect to **Claims 1,4,5,7,9-16,19,20,22,24:** Brown teaches a tampon formed from absorbent material 12 cut into a rectangle with outer end 21 having a length, thickness and width, wherein said width is measured between the two edges of absorbent material 12 that will correspond to the introduction and withdrawal ends of the tampon once said tampon is formed. The rectangular tampon precursor material also contains liquid-permeable plastic overwrap material 10 adhered to inner surface 13 of absorbent material 12 to form seal 16. Overwrap material 10 extends beyond the outer edge 21 of material 12 to form tab 14. Overwrap 10 is considered herein to have a width generally corresponding to the width of material 12 since the fold over regions 18 are narrow. Seals 16 are formed at the edge of absorbent material 12 that corresponds to the withdrawal end of said tampon. A tampon is formed by winding absorbent material 12 in a spiral fashion starting at end 20. (Fig. 1c) (Col. 2, lines 67,68)

Brown does not teach an overwrap material having a liquid-resistant zone. Li teaches that the treatment of hydrophobic materials with surfactants to increase their hydrophilicity is

known in the art therefore it would be obvious to one of ordinary skill in the art to treat the overwrap taught by Brown with a surfactant in certain portions of the overwrap that overlie the absorbent core and contact the vaginal wall of the user such that the overwrap 10 has a liquid-permeable zone and a liquid-resistant zone, wherein the portion of overwrap 10 that folds over said second edge is not treated and thus remains liquid-resistant.

With respect to **Claim 8,23:** Brown does not explicitly teach an overlap material 10 that is treated to be liquid impermeable. Li teaches that treating nonwoven webs to change their hydrophilicity (including eliminating the hydrophilicity) is known in the art. Therefore, it would be obvious to one of ordinary skill in the art to treat the overwrap taught by Brown to be liquid impermeable as taught by Li with a reasonable expectation of success..

With respect to **Claims 17,18:** Brown teaches that different sealing methods may be used and specifically cites heat sealing and adhesives. ('010, Col. 3, lines, 27, 28, 52, 53)

Claims 6 and 21 are rejected under 35 U.S.C. 103(a) as being unpatentable over Brown, Jr. (U.S. Patent No. 5,185,010) in view of Li et al (U.S. Patent Application Publication No. 2002/0169429) as applied to claims 1-5, 7-20 and 22-24 above, and further in view of Olson et al (U.S. Patent No. 5,916,205).

With respect to **Claim 6,21:** Brown teaches that the overlap material must be heat-sealable and that it is a thermoplastic nonwoven, but does not explicitly teach an apertured film. Li also does not teach an apertured film. Olson teaches cover material 102 for forming covers 46 for plural devices 20 that comprises an apertured thermoplastic film. ('205, Col. 20, lines 28-30, 33) With

respect to Claim 27, by teaching an apertured film, Olson is also teaching that perforations can be made in cover material 102 that enable the separation of adjacent absorbent segments from one another in the production process, said perforations or apertures defining separation lines. Olson teaches that this is a suitable material for a cover sheet for an absorbent interlabial device ('205, Col. 20, lines 30-32), therefore it would be obvious to modify the overwrap material taught by Brown to further comprise an apertured thermoplastic film as taught by Olson.

Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Melanie J. Hand whose telephone number is 571-272-6464. The examiner can normally be reached on Mon-Thurs 8:00-5:30, alternate Fridays 8:00-4:30.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Tatyana Zalukaeva can be reached on 571-272-1115. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see http://pair-direct.uspto.gov. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

Melanie J Hand
Examiner
Art Unit 3761

TATYANA ZALUKAEVA
SUPERVISORY PRIMARY EXAMINER

August 16, 2007